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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,376	10/25/2005	David Fenn	SWIN 3307	8192

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SMITH-HILL AND BEDELL, P.C.
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BEAVERTON, OR 97006

EXAMINER

HUYNH, LOUIS K

ART UNIT	PAPER NUMBER
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3721

MAIL DATE	DELIVERY MODE
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07/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,376

Applicant(s)

FENN, DAVID

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-57 is/are pending in the application.
- 4a) Of the above claim(s) 51-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/21/06, 3/6/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of group I, claims 31-50 in the reply filed on 6/20/2007 is acknowledged.
2. Claims 51-57 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/20/2007.

Claim Objections

3. Claims 39, 49 and 50 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.
 - The contact area between the first pack member and the second pack member does not form a part of the claimed apparatus, thus does not further limit the subject matter of the previous claim.
 - Claim 49 depends on claim 1 and does not set forth any further structural limitations that would further limit that would further limit the subject matter of claim 49, thus is a substantial duplicate of claim 31 as the limitations of claim 1 are imported into claim 49.
 - Claim 50, although includes the first and second pack members, does not set forth any further structural limitations that would further limit the subject matter of

claim 49. Note that the first and second pack members are work pieces and do not form a part of the claimed sealing apparatus.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 43, 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 43, line 2: “a current may flow” is vague and indefinite because it is unclear as to what kind of current that flows through the heating element.
- Claim 46, lines 3-4: “adapted to provide substantially no heat to air in the receptacles” is indefinite because it is unclear as to the structural limitation(s) that enable the heating means to provide substantially no heat to air in the receptacles.
- Claim 48, line 2: “the flow of current” lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 31-39, 42, 44-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Elver (US 3,347,733).

- With respect to claims 31-33, 42, 49 & 50, Elver discloses an apparatus (18) for heat sealing a first pack member (16) to a second pack member (17) that meets all of applicant's claimed subject matter; in particular, the apparatus comprises a base (19), a lid (33) and a heating means (35) formed on the lid (33) and adapted to seal the first pack member (16) to the second pack member (17) to form a receptacle (11); wherein the first and second pack members are sandwiched between the base and lid such that the heating means (35) contacts area substantially encircle the receptacle.
- With respect to claims 34 and 35, the base (21) of Elver includes a support member (21) having a planar surface for supporting a planar flange of the first pack member (16) and a plurality of cavities (22) for receiving a plurality of formations of the first pack member (16).
- With respect to claim 36, the lid (33) of Elver includes heating means (35) having planar contact surfaces for contacting the second pack member (17) which is a substantially planar coated cardboard.
- With respect to claims 37-39, the lid (33) is movably attached to the base (19) via an inherent support frame; wherein the lid is movable by an actuator (34) between an open position spaced from the base and a sealing position sandwiching the first and second pack members between the lid and the base. Note that the first pack member and the second member form a contact area when they are sandwiched

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between the lid and the base, and the contact area includes area representing the receptacles.

- With respect to claims 44 & 45, Elver discloses an apparatus (18) for heat sealing a first pack member (16) to a second pack member (17) that meets all of applicant's claimed subject matter; in particular, the apparatus comprises a base (33), a lid (19) and a heating means (35) formed on the base (33) and adapted to seal the first pack member (16) to the second pack member (17) to form a receptacle (11); wherein the first and second pack members are sandwiched between the base and lid such that the heating means (35) contacts area substantially encircle the receptacle.
- With respect to claim 46, the heating means (35) in the apparatus of Elver is fully capable of generating heat at a temperature well above 100°C in order to seal the first pack member (plastic sheet 16) to the second pack member (coated cardboard 17).

8. Claims 31-33, 40-43, 49 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Pizarro (US 3,488,472).

Pizarro discloses an apparatus for sealing a first pack member (14) to a second pack member (15) that meets all of applicant's claimed subject matter; in particular, the apparatus of Pizarro comprises a base (1), a lid (2) hinged to the base (1), a heating means (7) formed on the lid (2) and adapted to seal brim (13) of the first pack member (14) to the second pack member (15) to form a receptacle, an electrical heating element (8) for heating the heating means (7), a

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catch means (6) for holding the lid (2) under pressure to the base (1),. Note that the base (1) of the apparatus of Pizarro is fully capable of receiving the first pack member having a plurality of formations such as compartments integrally formed within the first pack member.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elver (US 3,347,733) in view of Zelnick (US 3,912,575).

With respect to claim 47, the apparatus of Elver meets all of applicant's claimed subject matter but lacks the specific teaching of a switch closing automatically when the lid is brought into the closed/sealing position. Zelnick discloses a sealing apparatus including a base (20), a sealing assembly (130) having a bar (150) carrying a heating element (170B), a switch (360) mounted on the base (20) that is automatically activated or closed to energize the heating element (170B) upon contact of an arm (380) secured to the bar (150) of the sealing assembly. it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the apparatus of Elver by having provided a switch that is automatically activated or closed upon movement of the lid toward the sealing position, as taught by Zelnick, in order to hand-free energize the heating means.

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11. Claim 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elver (US 3,347,733) in view of Simmons (US 3,925,139).

The apparatus of Elver meets all of applicant's claimed subject matter but lacks the specific teaching of a controller for controlling the flow of current in dependence on a temperature feedback signal. It is known in the art that electric heat sealer are controlled by a temperature controller to achieve a desired sealing temperature in order to produce a quality seal; for example, Simmons discloses a seal monitoring system including heat sealing jaw (16 & 18), a thermocouple (50) imbedded in one of the sealing jaw (18) for sensing temperature during the sealing operation, and a controller (110) for determine a signal representing the sensed temperature and regulating electrical power to the heating ribbon (26 & 28) of the sealing jaws col. 6, lines 34-51). The system of Simmons is to insure the quality of the seals formed by pressing and heating; therefore, it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the apparatus of Elver by having provided a seal monitor system, as taught by Simmons, in order to insure the quality of the seals between the first and second pack members.

12. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pizarro (US 3,488,472) in view of Zelnick (US 3,912,575).

With respect to claim 47, the apparatus of Pizarro meets all of applicant's claimed subject matter but lacks the specific teaching of a switch closing automatically when the lid is brought into the closed/sealing position. Zelnick discloses a sealing apparatus including a base (20), a sealing assembly (130) having a bar (150) carrying a heating element (170B), a switch (360)

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mounted on the base (20) that is automatically activated or closed to energize the heating element (170B) upon contact of an arm (380) secured to the bar (150) of the sealing assembly. it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the apparatus of Pizarro by having provided a switch that is automatically activated or closed upon movement of the lid toward the sealing position, as taught by Zelnick, in order to hand-free energize the heating means.

13. Claim 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pizarro (US 3,488,472) in view of Simmons (US 3,925,139).

The apparatus of Pizarro meets all of applicant's claimed subject matter but lacks the specific teaching of a controller for controlling the flow of current in dependence on a temperature feedback signal. It is known in the art that electric heat sealer are controlled by a temperature controller to achieve a desired sealing temperature in order to produce a quality seal; for example, Simmons discloses a seal monitoring system including heat sealing jaw (16 & 18), a thermocouple (50) imbedded in one of the sealing jaw (18) for sensing temperature during the sealing operation, and a controller (110) for determine a signal representing the sensed temperature and regulating electrical power to the heating ribbon (26 & 28) of the sealing jaws col. 6, lines 34-51). The system of Simmons is to insure the quality of the seals formed by pressing and heating; therefore, it would have been obvious to a skilled person in the art, at the time of the invention, to have modified the apparatus of Pizarro by having provided a seal monitor system, as taught by Simmons, in order to insure the quality of the seals between the first and second pack members.

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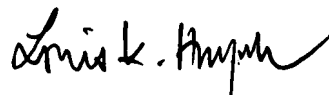
Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure has been cited on form PTO-892 along with the applied references.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is 571-272-4462. The examiner can normally be reached on M-F from 8:00AM to 3:00PM.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Louis K. Huynh
Primary Examiner
Art Unit 3721

July 12, 2007